

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**FIRST RESPONSE, INC.,**

**Plaintiff,**

**v.**

**TMC SERVICES, INC. d/b/a  
TMC ENVIRONMENTAL,**

**Defendant.**

**Civil Action No. \_\_\_\_\_**

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**NOTICE OF REMOVAL**

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Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant TMC Services, Inc. d/b/a TMC Environmental (“TMC Environmental”) hereby gives notice of the removal to the United States District Court for the Middle District of Tennessee of the action styled *First Response, Inc. v. TMC Services, Inc. d/b/a TMC Environmental*, Case No. 13-491-III, currently pending in the Chancery Court for Davidson County, Tennessee (the “State Court Action”). As grounds for this removal under diversity of citizenship, 28 U.S.C. § 1332, TMC Environmental states as follows:

1. Plaintiff First Response, Inc. (“First Response”) commenced the State Court Action by filing a Complaint in the Chancery Court for Davidson County, Tennessee on or about April 4, 2013. In the Complaint, First Response asserts claims for breach of contract, unjust enrichment, and for violation of the Tennessee Prompt Pay Act, all claims allegedly arising from emergency response and remediation services provided by First Response in New York City pursuant to a Master Service Agreement between TMC Environmental and First Response (the “Agreement”) (attached as Exhibit A to the Complaint).

2. On or after April 15, 2013, Plaintiff served on TMC Environmental a Summons and Complaint from the State Court Action. **Exhibit I** contains the Summons, the Complaint

(with exhibits thereto), and a return on service of the summons, which collectively constitute a complete copy of the state court file.

3. This is a civil action that falls under the Court's original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446.

4. According to the Complaint, First Response is a Tennessee corporation with its principal place of business in Goodlettsville, Davidson County, Tennessee. TMC Environmental is a Massachusetts corporation with its principal place of business in Franklin, Massachusetts.

5. Although the Agreement (Exhibit A to the Complaint) contains a forum selection clause designating Davidson County Chancery Courts as the forum for disputes arising under the Agreement or for work performed thereunder, that provision is void and unenforceable under the laws of both Tennessee and New York as void against the public policy of each state. *See* Tenn. Code Ann. §66-11-208(a); and NY General Business Law § 757(1).

6. It is clear from the face of the Complaint that the amount in controversy exceeds \$75,000 exclusive of interest and costs.

7. Therefore, pursuant to 28 U.S.C. § 1332, this Court has original, diversity jurisdiction over the State Court Action.

8. This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446, within 30 days of the filing of the State Court Action.

9. The United States District Court for the Middle District of Tennessee is the appropriate venue for removal of Plaintiff's State Court Action, pursuant to 28 U.S.C. § 1441, which permits any civil action brought in any state court in which the District Courts of the

United States have original jurisdiction, to be removed to the District Court of the United States for the district and division embracing the place where the state court action is pending.

10. In accordance with 28 U.S.C. § 1446(d), TMC Environmental is concurrently serving Plaintiff's counsel with a copy of this Notice of Removal. Defendant is also filing a written notice of the filing of this Notice of Removal with the Clerk of the Chancery Court for Davidson County, Tennessee, without attachments, a copy of which is attached as **Exhibit 2**, and serving a copy of same to counsel for First Response.

11. Defendant reserves the right to amend or supplement this Notice of Removal.

12. By filing this Notice of Removal, Defendant does not waive any defenses that may be available to it and specifically reserves all jurisdictional challenges, including objections to personal jurisdiction, that are available to it.

WHEREFORE, having fulfilled all statutory requirements, Defendant removes the above-described action pending in the Chancery Court for Davidson County, Tennessee, to this Court, and requests this Court assume full jurisdiction and permit this action to proceed before it as a matter properly removed thereto.

This 14th Day of May, 2013.

Respectfully submitted,

HARWELL HOWARD HYNE  
GABBERT & MANNER, P.C.

s/ Alexandra Coulter Cross

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was mailed via U.S Mail, postage prepaid, this 14th day of May 2013 to the following:

Christopher S. Dunn  
Keith W. Randall  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219

s/ Alexandra Coulter Cross  
Alexandra Coulter Cross